

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CR 19-00008 SOM
4)
5 Plaintiff,) Honolulu, Hawaii
6 vs.) May 13, 2019
7) SENTENCING
8 FRANK JAMES LYON,)
9 Aka "Jim Lyon, ")
10 Defendant.)
11 _____)

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE SUSAN OKI MOLLWAY
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Government: KATHERINE A. RAUT, AUSA
17 U.S. Department of Justice
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21 For the Defendant: LYLE S. HOSODA
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Also Present: ARYN NOHARA, FBI Special Agent

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1 MONDAY, MAY 13, 2019 2:14 P.M.

2 THE COURTROOM MANAGER: Criminal 19-00008 SOM,
3 United States of America versus Defendant(1) Frank James Lyon,
4 also known as Jim Lyon.

5 This case has been called to the sentencing to Count 1 of
6 the felony information.

7 Counsel, please make your appearances for the record.
8 Please speak into a microphone.

9 MS. RAUT: Afternoon, Your Honor.

10 Katherine Raut on behalf of the United States joined by
11 FBI Special Agent Aryn Nohara.

12 THE COURT: Okay. Good afternoon.

13 MR. HOSODA: Good afternoon, Your Honor.

14 Lyle Hosoda, Addison Bonner, and Erika Amatore appearing
15 on behalf of the defendant Frank James Lyon. May the record
16 also reflect the presence of Mr. Lyon.

17 THE COURT: Okay. Thank you very much. You can be
18 seated.

19 Before we get to the presentence report, I did want to
20 note that I have a stipulation that was approved by me revising
21 the plea agreement, and that is signed not only by counsel for
22 both the government and the defense, but also by the defendant
23 himself, right?

24 MR. HOSODA: Yes, Your Honor.

25 THE COURT: Okay. Okay. Then I would like to hear

1 from Mr. Lyon whether he has reviewed the Presentence
2 Investigation Report.

3 Have you had a chance to go over that?

4 THE DEFENDANT: Yes, I have, Your Honor.

5 THE COURT: Now, the lawyers are required to tell me
6 if they have objections to the report. Your lawyer did file a
7 sentencing statement saying that you had no objections to the
8 report, but asking for some pretty much factual amendments.
9 Those amendments have been made.

10 Did you have objections that you thought your lawyers
11 should have told me about but they failed to do that?

12 THE DEFENDANT: I don't have any objections, Your
13 Honor.

14 THE COURT: Okay. You can sit down.

15 Mr. Hosoda, am I correct that the comments that were made
16 in the defense sentencing statement have been adequately
17 addressed from your point of view in the final presentence
18 report?

19 MR. HOSODA: Yes, they have, Your Honor.

20 THE COURT: Okay. Now, the government filed a
21 sentencing statement. My understanding is that the government
22 has no objections to the PSR.

23 MS. RAUT: That's correct, Your Honor.

24 THE COURT: Okay. Then I am adopting the
25 Presentence Investigation Report. This will serve as my set of

1 findings for purposes of sentencing. It will be filed under
2 seal but will remain available to the lawyers on both sides if
3 they need to refer to the document for future proceedings.

4 I am accepting the plea agreement as revised in the
5 stipulation filed on April 23rd of this year.

6 Relying on the PSR, I conclude that under the advisory
7 sentencing guidelines, Mr. Lyon falls at total offense level
8 25, Criminal History Category I.

9 By statute, the maximum prison term that could be imposed
10 is 5 years. The guidelines suggest a prison term between 57
11 and 60 months.

12 Supervised release following any prison term is set at a
13 maximum of 3 years by statute with the guidelines suggesting 1
14 to 3 years of supervised release.

15 Probation is not contemplated by the sentencing
16 guidelines, but if that were the sentence, by statute it would
17 have to be between 1 and 5 years.

18 The maximum fine that could be included in the sentence is
19 set by statute at \$250,000 with the guidelines suggesting that
20 if a fine is imposed, it begin at \$20,000, going up to
21 \$200,000.

22 Whether there is a fine or not, there is a mandatory \$100
23 special assessment.

24 Mr. Hosoda, any dispute with what I've announced so far?

25 MR. HOSODA: No dispute, Your Honor.

1 THE COURT: Ms. Raut?

2 MS. RAUT: No dispute.

3 THE COURT: Okay. Then I think I would like to hear
4 from the government on its motion for downward departure.

5 I did review the government's motion and I note that the
6 government is recommending a sentence between 41 and 51 months.

7 MS. RAUT: That's correct, Your Honor.

8 THE COURT: Did you want to add anything to the
9 record regarding the government's motion?

10 MS. RAUT: I would just reemphasize as stated in the
11 government's motion that this defendant did cooperate and
12 that's the basis for the motion and the reason the government
13 recommends a 3-level downward departure; however -- and that
14 cooperation included voluntarily speaking with the government,
15 admitting to his participation in the conduct, and providing
16 voluminous documents to the government.

17 But I would also note that the cooperation was limited in
18 certain extent as well. The defendant only came in to admit to
19 his conduct after the government provided a reverse proffer
20 wherein overwhelming evidence of the defendant's guilt was
21 presented to him.

22 The -- additionally, the cooperation and the substantial
23 assistance towards the prosecution of another individual, while
24 helpful, I would note that the government also had significant
25 evidence of that defendant's guilt prior to the cooperation.

1 And furthermore, the defendant had contact with that
2 individual during the period after which the government had
3 been in communication with the defendant and had given the
4 reverse proffer and before the defendant signed the cooperation
5 agreement and pled guilty very soon thereafter. During that
6 period, we understand that there were approximately six calls
7 made by the defendant to the other individual who the defendant
8 was aware the government was seeking his cooperation with
9 respect to, and that's the government official Master Halbert
10 who has also pleaded guilty in this matter.

11 THE COURT: So one of the things that the defense
12 has noted is that Mr. Halbert appears to have a guideline range
13 considerably lower than even what the government is
14 recommending with its motion for downward departure. Would you
15 like to address that?

16 As you know, one of the things I need to do is to avoid
17 unwarranted disparities in sentencing, so I would very much
18 like to hear the government's discussion of why Mr. Lyon should
19 get a sentence in the range of 41 to 51 months while
20 Mr. Halbert, at least in the guideline range, has a 19- to
21 24-month guideline range.

22 MS. RAUT: Sure. So Mr. Lyon is an individual who
23 has admitted to paying bribes to receive approximately
24 \$10 million worth of contracts for his company. He stated that
25 the bribes that he paid kept his company afloat.

1 I would also note that the charged conduct is probably
2 less than the actual conduct, the bribery, which is admitted in
3 the defense filings to this being something that was going on
4 long before what was charged with -- you know, this was the way
5 this business -- that this individual and his father conducted
6 their business throughout the business.

7 So the guidelines range in that sense is lower, that it
8 doesn't capture the full conduct.

9 And furthermore, this defendant was paying bribes as a
10 U.S. individual for contracts that were in large part funded by
11 U.S. federal grant money. He knew what he was doing. He
12 admitted as much in the 2013 emails that the defense cites. He
13 says, "I know my conduct is illegal" in those emails and
14 he -- that's years after the scheme had began.

15 And the scheme continued for years after that. In fact,
16 he instructed the deletion of his emails as part of his effort
17 to cover up his illegal conduct. He took several actions
18 indicating that he, as the owner of a business, actively
19 participated in conduct that he knew was illegal and carried it
20 out to win millions of dollars worth of contracts, as compared
21 to Mr. Halbert, who I would note is already -- has begun --
22 self-surrendered and begun to serve his sentence.

23 So he will certainly be incarcerated for some period of
24 time. He -- his guidelines are lower based on the fact that
25 he's charged with a different crime. The conduct, while

1 certainly overlapping, is not necessarily comparable.

2 His guidelines are based on the international movement of
3 bribe money and so it does not capture the full bribe payment
4 amount, whereas Mr. Lyon is charged with the payment of the
5 bribes, the FCPA violation, as well as the 18 U.S.C. 666
6 violation. And, I think it's difficult to use that as a
7 comparison given the different statutes under which they're
8 charged in the different positions.

9 THE COURT: Okay. Thank you.

10 Mr. Hosoda.

11 MR. HOSODA: Thank you, Your Honor.

12 I look at it a little bit differently. I mean, if you
13 take all this in background and context, Mr. Lyon was
14 represented by Mike Purpura at the time. I was involved pretty
15 quickly after that because I was representing some of the
16 company employees at the time. But there was a long period of
17 time there, prior to the proffer, that there was nothing going
18 on, no prosecution.

19 When things -- Mr. Purpura, very clear, was in discussion
20 with the government and told them -- told the government that
21 cooperation was an open discussion and they basically waiting
22 for the opportunity to talk with him.

23 So to say that all this time went by and put it on
24 Mr. Lyon is not accurate.

25 Also, once he did say that he was cooperating, he

1 cooperated in full. And it wasn't limited in any way in terms
2 of he answered each and every one of their questions at least
3 two lengthy interviews.

4 Not only that, but when it came time to turn over
5 electronic information -- and in these days it's not only
6 voluminous, but it's very costly -- Mr. Lyon paid for all of
7 the turning over of all of that electronic information and gave
8 them any and all information that they requested.

9 And it is his cooperation that led to the indictment and
10 the plea of this individual.

11 And in addition, there is another individual, at least
12 one, that is now being seriously investigated as a result of
13 his cooperation.

14 So all things considered, Your Honor, I think this is
15 worthy of not only the downward amount that the government is
16 requesting, but certainly in a situation where Mr. Lyon is the
17 individual, was he the one who sought out to bribe? Or was it
18 the other individual who's the government official that
19 approached him, as we have provided with emails where basically
20 he was told that in order to get contracts, he would have to do
21 certain things? And that became a part of and the way of his
22 life.

23 So in terms of comparison, I don't think there's any
24 comparison; that he should be entitled not only to the downward
25 departure, but a further variance at least to the point of the

1 other individual as well as -- and I'd like to argue further
2 and I will later -- a further downward variance.

3 Thank you.

4 THE COURT: Well, I think what might help me is
5 certainly I'm going to grant the government's motion to
6 recognize Mr. Lyon's substantial assistance as I calculate the
7 sentence.

8 But in granting it, I am not setting any number yet,
9 either for the substantial assistance credit or the overall
10 sentence. So I would greatly appreciate having the attorneys
11 address the overall sentence. I don't know if the government
12 has anything more than it's already stated in the motion for
13 downward departure. If it does, I'll hear from the government.

14 Now if not, I'll go back to Mr. Hosoda, and then I'll also
15 hear from Mr. Lyon, if he wants to say anything.

16 MS. RAUT: Your Honor, with respect to the 3553(a)
17 factors, particularly as set forth in the defendant's
18 motion -- or sentencing statement, I should say the nature and
19 circumstances of this offense I think are laid out pretty
20 clearly already in the government's filing.

21 But again, this was spanning a decade, both foreign and
22 domestic officials that were bribed to get different contracts
23 that -- you know, for more than \$10 million worth of business
24 for this company. So this is a substantial amount of bribery
25 and a substantial time period that this defendant knew what he

1 was doing was illegal and continued to do so, where a sentence
2 of probation or anything on the very low end would reflect that
3 this is business as usual. It would be a slap on the wrist for
4 such conduct that is so extensive over such a period of time
5 and for such a large amount of money.

6 And again, the significant evidence of the defendant's
7 knowing and active participation, despite it being illegal,
8 whether or not the government official was the one who
9 suggested the bribe payment, which is often the case, this
10 defendant did what it took to get that business to get ahead of
11 others who are playing fairly in the contracting process, to
12 pay bribes and to get the business and take it away from people
13 who are not paying bribes.

14 As to the history and characteristic of this defendant,
15 the government does not dispute that he has significant family
16 and community ties as reflected in his many letters of support,
17 that he has mental health issues -- not to diminish the
18 significance of that at all -- or financial and business
19 pressures that he may have been facing. But none of those
20 factors is unique or so extraordinary as to warrant a variance.

21 Defendants are typically engaging in crime because of
22 financial or business pressures, real or perceived. Most
23 defendants have family and community ties and will face, you
24 know, financial challenges from a period of incarceration. But
25 that -- under 5H1.6, that is not something that should be

1 considered given that it is not unique or extraordinary as
2 compared to other defendants.

3 THE COURT: Okay. Mr. Hosoda.

4 MR. HOSODA: Your Honor, thank you very much for the
5 opportunity to address the Court. I thank you on behalf of
6 Mr. Lyon. He thanks your staff and especially Ms. Darcie
7 Ing-Dodson for the thoroughness of what she's done, and also
8 the professionalism of the AUSA's office, and Ms. Raut in
9 particular.

10 I was moved this weekend because I attended the University
11 of Hawaii graduation ceremonies, and it was filled with, in
12 addition to thousands of leis, lots of heart, lots of
13 inspiration, and a lot of hope, much the same as 30 years
14 ago -- 30-plus years ago when Mr. Lyon graduated from Punahou
15 and then subsequently from the University of the Pacific.

16 No one in his world could have ever predicted or foreseen
17 that we would be here today. Nearly a hundred letters --
18 almost a hundred letters of support tell what a good person Jim
19 is and has been: a good son, sibling, father, co-employee,
20 boss, youth athletic coach, teammate, community board member, a
21 heavy donator of time and money to various local charities, and
22 otherwise contributing member to our community.

23 He stands before you humbled and full of remorse for what
24 he's done. He knew his conduct was a crime and did not know
25 how or have the strength on how to stop or get himself out of

1 it. It would have taken him to completely remove himself and
2 throw everything away.

3 In the end, Your Honor, it's come to this place. This
4 paid-for-play disease is contagious, easily caught, but
5 extraordinarily difficult to get rid of and extricate yourself
6 from. The consequences for Mr. Lyon have been overwhelming and
7 dramatic.

8 His 91-year-old mother is sitting in the back, June Lyon.
9 She is going to have to leave her family home that she has
10 lived in for an entire generation because of this conduct. At
11 that age, change is difficult. Jim will not be there to care
12 for her in the event of incarceration.

13 His marriage to Nikaela, who's also here, his wife of over
14 25 years, is now in divorce -- divorce proceedings. His
15 relationship with his children have all been compromised. His
16 son, 16, Punahou sophomore, I believe, is also here. Because
17 of what happened and because of how much energy and what he had
18 to do at work, these relationships were compromised.

19 Lanai & Associates dates back to the '60s. Frank Lyon,
20 his father, poured his heart and soul into this company to
21 create what it was, and in its heyday there were hundreds of
22 employees with large jobs throughout the world. Much of what
23 Jim did and aspired to do and aspired to be was as a result of
24 that relationship with his father.

25 He's repeatedly told me how very sorry he is and

1 apologizes to his family and all of those here, his friends,
2 his employees, and the community. I am humbly asking and
3 respectfully requesting this Court consider a fine and
4 probation with specific terms for Mr. Lyon, now that he's lost
5 everything, enabling Mr. Lyon to work to pay his fine and to
6 follow through with making it right with his family and to the
7 community.

8 I've got reasons for the request, Your Honor, and these go
9 with 18 U.S.C. 3553 and the factors. His past record, first of
10 all. Taking back to the hope and the inspiration of those
11 graduation days, now that the company is in bankruptcy, he's
12 not -- Lyon has not officially filed, Your Honor, but he has
13 retained counsel and they have basically -- they're down to the
14 last few things before they actually file for bankruptcy.

15 He has hope and must give back to the community. At 53,
16 he's ready. With the front page news of the media talking
17 about unprecedented times in terms of business and other
18 ethics, Mr. Lyon wants to be a part of that change and he has
19 already outlined programs where, because of his situation, it
20 gives him an automatic audience.

21 As far as my research tells, this is the first FCPA case
22 here that's being sentenced. We did a considerable amount of
23 research and it stands -- it's summarized in table form on
24 Table 6. And Your Honor will see that, yes, when Ms. Raut
25 stands before you and says that there were millions in

1 contracts, if you look at what the Lyon Company had versus all
2 of these others, the 15 other cases, they're but a mere
3 fraction of what those other contracts and those other
4 defendants did.

5 And in terms of the bribe amounts paid, again a mere
6 fraction of what was paid in those cases. That's not to
7 justify and he's not seeking to say anything other than that he
8 pled guilty, but the one that's closest to the present case,
9 Your Honor, and we've discussed that at length, is the *Bonds*
10 case, and it -- very similar facts. And in that case,
11 probation was given.

12 There are two other cases in the 15 -- amongst the 15 that
13 also got probation. And in the first two where they talk about
14 what the sentence was, we could not get further information,
15 but the sentence read time served. In most situations in these
16 cases, time served is a very short amount of time and it's
17 essentially tantamount to probation.

18 In this case, as I've already outlined in opposition -- or
19 in support of the motion but further downward departure, it was
20 Mr. Lyon's cooperation that resulted in the plea of one and a
21 investigation of others.

22 Incarceration is not going to help Mr. Lyon. You have
23 before you the mental health care record of Mr. Lyon, and based
24 upon his psychiatrist's recommendations and observations, being
25 in jail is not going to help.

1 I talked a bit about pay for play. Mr. Lyon was not the
2 one seeking out government officials. The officials and their
3 intermediaries sought him out. And again, he inherited this
4 from his dad, and along with his natural and biological desire
5 to carry on the legacy was put into this world, and like I
6 said, it would have taken a great deal to get out.

7 Even though Mr. Lyon may have paid for jobs, that doesn't
8 diminish the fact that Lyon & Associates, a very competent and
9 reputable engineering firm, still had to do the job. And by
10 all accounts in the community -- and there are many in the
11 development community standing and sitting behind me -- Lyon
12 did a very good -- they were very competent, very capable, and
13 very experienced in the engineering work that they did.

14 Jim did not do anything to hurt anyone physically.
15 Arguably, in this process he hurt himself mentally and
16 emotionally.

17 I acknowledge that a prison sentence sends a message, but
18 I will tell you that that will be one headline and maybe one
19 news cycle. If given the opportunity and allowed, Mr. Lyon's
20 message will be carried in business ethics classes up at the
21 Shidler Business School and at the William S. Richardson School
22 of Law. If he has to work to pay for his fine and to get back
23 into the graces of earning to pay for his kids' tuition at
24 Punahou and at Whitworth College, that will send a message for
25 now and a long time.

1 I'd ask that you downward variance off of the 355 -- 3553
2 factors and consider the entire record of this gentleman.

3 I would ask for probation and a fine because I think that
4 is consistent with the cases and Table 6 and certainly allowed,
5 and based upon this record, I think that it's justified.

6 Thank you.

7 THE COURT: Did he want to be heard?

8 MR. HOSODA: I think he does, Your Honor.

9 THE COURT: I'll hear from him now.

10 THE DEFENDANT: Thank you for the opportunity to
11 address the Court today.

12 I pled guilty to conspiracy to violate the Foreign Corrupt
13 Practices Act and to pay a bribe to an agent of an organization
14 receiving federal funds. I accept the full responsibility for
15 my actions and apologize to the Court, the community, and
16 especially to my family, friends, and associates, who continue
17 to stand by me through this very difficult time.

18 This experience has taught me a lot, continues to do so on
19 many levels. It is beyond humbling to lose everything -- my
20 business, my worldly possessions, and most of all the
21 relationships that I will never be able to get back.

22 To the employees, clients, and communities across the
23 globe that Lyon and Associates served for nearly six decades, I
24 apologize for letting you down. This deed is solely my
25 responsibility.

1 I will never again take for granted the freedoms I have
2 and will do my very best to show my gratitude by first
3 accepting the consequences for my actions.

4 To my family and friends, I love you all for standing by
5 me. I have so much gratitude for your unconditional support.
6 I take all your words and advice to heart and promise to
7 continue to be a healthy and positive contributing member of
8 society no matter what the outcome is today.

9 Thank you to my attorneys who have stood by me and helped
10 me to understand and navigate this process.

11 I also appreciate the professionalism and courtesy shown
12 by Pretrial Services, the probation office, the prosecutor, and
13 the FBI.

14 Your Honor, I'd like to share that for the past 30 years
15 that I've been with Lyon Associates, I truly embraced and loved
16 the work that we performed for communities around the world.
17 My passion has always been to help others without question and
18 to put all our effort into solving the most difficult
19 challenges for those most in need.

20 While this situation has taken away my ability to work and
21 earn a living, I know it will turn into something positive and
22 worthwhile. It has to.

23 Thank you for the opportunity to speak, Your Honor.

24 THE COURT: Okay. Did you want to say anything
25 more, Ms. Raut, in response to what you've heard?

1 MS. RAUT: Nothing further, Your Honor.

2 THE COURT: Okay. So I have a job here and I have
3 to fashion a sentence, and in doing that, I need to meet a
4 number of goals. One of those goals is punishment, but it's
5 not the only goal.

6 I'm also concerned about trying to prevent future crime.
7 I'm concerned about protecting the community, and I'm concerned
8 about addressing Mr. Lyon's needs.

9 At all costs, I have to avoid imposing a sentence that is
10 greater than necessary to achieve those goals.

11 I have studied the record in this case. There's been
12 quite a bit of material provided by the defense, not only many,
13 many letters of support, but some information about how this
14 kind of case has been handled in other circumstances, other
15 courts.

16 I will say it's really hard for me to rely on a chart.
17 Every defendant is an individual and the judge sentencing that
18 individual has to take into account that person's individual
19 circumstances. So it's really hard to compare people in
20 different circumstances, different times, and, you know, I know
21 Mr. Hosoda's looking at time served and says, well, lot of
22 times that might be a short time. I don't know that. Time
23 served could be actually a considerable time depending on
24 whether the sentencing judge is dealing with somebody who
25 didn't get granted bail from the start, for whom there were

1 various continuances. Even if there was a guilty plea, it
2 might have taken some time for the guilty plea to be entered.

3 I have noted that many of the cases have years when the
4 cases -- the indictments were filed that was some time ago,
5 more than a decade ago for many of them. And so it's really
6 hard for me to compare Mr. Lyon's situation with the situation
7 those other courts faced.

8 Notwithstanding what I've just said, though, I am very
9 concerned most particularly by the mental health challenges
10 that Mr. Lyon has faced. Ms. Raut is correct that there are
11 many circumstances faced by Mr. Lyon that are actually not
12 unusual; lots of defendants come before every federal judge
13 with serious mental health problems.

14 I'm concerned that in Mr. Lyon's case, though, the mental
15 health problems are particularly severe. You know, we often
16 deal with people who are so debilitated by medical problems,
17 either mental health issues or physical issues, that they
18 cannot function at all.

19 Mr. Lyon was functioning at a very high level and I
20 imagine that that was a great deal of stress. And then
21 sometimes it appears that his mental health issues actually so
22 overwhelmed him that he could not really function. It does
23 look as if some of the time that he was dealing with mental
24 health crises overlapped some of the time in issue here, and my
25 concern is that he will possibly have a particularly difficult

1 time serving a sentence given the mental health issues.

2 Now, I hear Mr. Hosoda talk about all the contributions
3 that Mr. Lyon made to the community, to other people, and that
4 is definitely to his credit. But I temper my consideration of
5 that with the knowledge that any financial contribution may
6 well have included ill-gotten gains, ill-gotten because they
7 flowed from a system of bribes being given in return for
8 business that made -- made for profit for the company that
9 Mr. Lyon was working in, first with his father and then after
10 his father's death, without his father.

11 That's a lot for me to put together. I am not finding my
12 way to a probation sentence given the seriousness of the
13 conduct.

14 At the same time, the very serious mental health issues
15 and the difficulty that that may pose for Mr. Lyon during his
16 incarceration do lead me to think not that the Bureau of
17 Prisons cannot treat the condition, which it can -- it deals
18 with people with serious mental health problems all the time --
19 but Mr. Lyon has had access to good medical treatment and still
20 has problems because this mental health situation is a
21 retractable problem. It's hard. Medicine has not progressed
22 to where we can easily address mental health issues such as the
23 one that Mr. Lyon has.

24 And so I am proposing something lower than what the
25 government has suggested. The government has suggested a

1 3-level departure down to a 41- to 51-month range. Even at the
2 low end of that range, I am concerned enough about the
3 difficulty for Mr. Lyon of serving that sentence. This is not
4 somebody who's inured to prison life. He doesn't have a prison
5 sentence. It will be particularly difficult.

6 I am proposing a 30-month sentence in custody, followed by
7 3 years of supervised release.

8 I'm not proposing a fine, but I must impose the \$100
9 special assessment.

10 When Mr. Lyon completes his prison term, he has to follow
11 the mandatory and standard conditions of being supervised which
12 include the following:

13 He cannot unlawfully use a controlled substance. He has
14 to have one drug test within 15 days of starting his
15 supervision period, and after that at least 2 more drug tests
16 with the maximum being 8 valid drug tests per month, unless
17 there's a positive drug test. If there's a positive drug test,
18 probation can test up to one valid drug test every day.

19 You must cooperate in DNA collection as directed by your
20 probation officer.

21 And you must report to the probation office in the
22 district you're allowed to live in within 72 hours of being
23 released from prison custody, unless your probation officer
24 gives you different instructions.

25 Mr. Hosoda, there are other mandatory and standard

1 conditions. If the reading of those others is waived, I will
2 move to special conditions; otherwise, I'm happy to read the
3 other mandatory and standard conditions.

4 MR. HOSODA: We would waive, Your Honor.

5 THE COURT: Okay. Then moving to special conditions
6 of your release after you've completed your prison term:

7 You must participate in a substance abuse treatment
8 program and follow that program's rules and regulations. Your
9 probation officer will consult with your treatment provider in
10 supervising your participation in the program.

11 So that supervision includes having input by the probation
12 officer into things like who provides the treatment, where, in
13 what format, for how long a time period, and how intensely.

14 Now, as part of your drug treatment program, you will have
15 drug testing and you must not try to obstruct or tamper with
16 any testing method.

17 You are prohibited from using marijuana, synthetic
18 marijuana, any product containing tetrahydrocannabinol or any
19 other products derived from a marijuana plant, including for
20 medicinal or business purposes, without advanced approval from
21 the court.

22 You are not allowed to possess or use alcohol during your
23 supervised release period, and you must warn other people you
24 live with or guests about this prohibition for your residence
25 and your property.

1 You must submit to alcohol testing at the direction of the
2 probation office.

3 You do have to give your probation officer any financial
4 information about yourself that is requested, and you must
5 authorize the release of information from third parties. Your
6 probation officer may share your financial information with the
7 U.S. Attorney's Office.

8 You must participate in a mental health treatment program
9 and follow the rules and regulations of that program. Again,
10 your probation officer, consulting with your treatment
11 provider, will supervise your participation in that program.
12 You must take all mental health medications, including
13 psychotropic medications prescribed by your treating physician.

14 You do have to give the probation officer a signed release
15 that authorizes credit checks.

16 You also have to provide an accurate financial statement
17 with supporting documents that list all of your sources and
18 amount -- amounts of income, your expenses, and any business
19 you own in whole or in part.

20 You must give the probation office any and all business
21 records, financial records, client lists, and other records
22 that relate to any business you own in whole or in part as
23 directed by your probation officer.

24 If you are self-employed, you have to hire a bookkeeper or
25 accountant to manage your business records, including all

1 income and expenses, profits and losses, on a regular basis at
2 the discretion and direction of your probation officer.

3 You're subject to searches of yourself, your property,
4 house, residence, vehicle, papers, or office. If you don't
5 submit to a search, supervised release can be revoked, which
6 means you could be brought back to court, and even though you
7 will have served your prison sentence, you could be sentenced
8 to more prison time.

9 You have to warn other people in areas subject to search
10 about this condition. Your probation officer may rely on this
11 condition to conduct a search if the officer has a reasonable
12 suspicion that you have violated a supervised release condition
13 and that the areas to be searched have evidence of your
14 violation. Any search has to be at a reasonable time and in a
15 reasonable manner.

16 Now, in proposing this sentence, I do recognize that you
17 did plead guilty to conspiring to violate the Foreign Corrupt
18 Practices Act and to pay a bribe to an agent of an organization
19 receiving federal funds. I have calculated the guideline
20 range, taking into account the nature of your crime, the number
21 of bribes involved, the amount of the benefit you got, your
22 accepting responsibility for your crime, and your criminal
23 history.

24 Of great concern to me is the length of time in which you
25 and your father and others were conspiring to get contracts for

1 your family business in exchange for bribes to government
2 officials, both for the Federated States of Micronesia, and for
3 the State of Hawaii. Now, these included cash payments and
4 gifts such as automobiles, travel expenses, entertainment, and
5 groceries for hundreds of thousands of dollars, and in return
6 you got millions of dollars in contract payments. That was for
7 federal -- Federated States of Micronesia.

8 For the State of Hawaii, again, I'm looking at hundreds of
9 thousands of dollars in bribes to obtain millions of dollars in
10 a contract.

11 I'm very concerned that the long period of time and the
12 great dollar amounts involved may have made you think for
13 decades that, well, this is business as usual. This is not
14 business as usual. This is illegal activity,.

15 You've heard me talk about my concern about your mental
16 health issues and there are a number of diagnoses. I know you
17 had a number of hospitalizations. I fully recognize how
18 serious the situation is. I'm concerned that drugs and alcohol
19 may have been a way that you were trying to deal with those
20 issues. And obviously that was not a fruitful way for you to
21 deal with your health issues. I'm very concerned about what
22 that may mean for your future.

23 But I'm also very much aware that the crime that brings
24 you before me is not everything there is to know about you.
25 You have lots of friends and family supporting you. I know

1 that from the letters I've gotten.

2 I'm conscious that this is not a crime of violence that
3 brings you before me, and your only run-in with the criminal
4 justice system before this crime was a DUI conviction more than
5 a dozen years ago.

6 You have accepted responsibility for your actions. You
7 have dealt with a number of pressures. You clearly have the
8 intelligence, the education, the experience, the language
9 fluency that should help you to stand up on your feet again
10 when you complete your prison term.

11 You have been complying with your release conditions so
12 far. You've passed all your drug and alcohol tests, and you do
13 appear to me to be committed to righting yourself, to going
14 forward in your life within the law. And you did show that in
15 the manner in which you did assist the government which has
16 made the government file a motion to give you credit for that.

17 So that's the sentence I've proposed. Is there a legal
18 challenge from the government?

19 MS. RAUT: No, Your Honor.

20 THE COURT: Mr. Hosoda?

21 MR. HOSODA: May I have a moment to consult?

22 THE COURT: Yes.

23 (Discussion between the defendant and defense counsel.)

24 MR. HOSODA: Thank you for the opportunity to
25 consult. The defendant thanks you very much for the very

1 thorough and your proposed sentence, Your Honor. Thank you.

2 THE COURT: No legal challenge?

3 MR. HOSODA: No legal challenge.

4 THE COURT: Then that's the sentence: 30 months in
5 custody, 3 years of supervised release, no fine, but there is
6 the \$100 special assessment.

7 Now, in your plea agreement, you did limit your right to
8 challenge this sentence, but if you believe you have a right to
9 appeal, then you need to talk to your lawyers right away
10 because it's just a 14-day appeal time. That starts to run
11 when I file the judgment, which is just the document that puts
12 into writing this oral sentence.

13 The judgment is highly likely to be filed within the next
14 few days, this week or next week, so you should keep in touch
15 with your lawyers if you are considering that.

16 Now, I am happy to entertain requests for recommendations.
17 I don't know if -- with a sentence of this range, he's highly
18 likely to be kept here, I think. But we can ask for another
19 facility, if you would like.

20 I'm happy to recommend mental health and substance abuse
21 treatment. Did you want to ask me for a particular programs?

22 MR. HOSODA: No, Your Honor. Actually in discussing
23 it with Mr. Lyon, we really didn't think that that was a
24 possibility of him being kept here, so that would be our
25 preference, the defendant's preference, if --

1 THE COURT: Okay. So the prison normally says two
2 years, but I'm pretty sure some people have managed to stay
3 here a little longer. You want FDC Honolulu as the first place
4 recommended? I will do that for ease of keeping his family
5 connections.

6 Just in case they don't allow him to stay here, did you
7 have another place? I have to tell Mr. Lyon, I can make
8 recommendations. The prison doesn't have to follow them, but
9 they try to.

10 So did you want me to recommend another facility?

11 MR. HOSODA: Yes, Your Honor, Lompoc.

12 THE COURT: Okay. I'll recommend Lompoc.

13 Now, with a 30-month sentence, that's probably long enough
14 that he might qualify for the 500-hour Comprehensive Drug
15 Treatment Program. I don't know if you want me to recommend
16 that, and I say that because they don't have that at FDC
17 Honolulu. And if I put that in, it possibly might increase the
18 chance that they put him at Lompoc.

19 So what would you like me to do? Is it 30 months? Did he
20 need 36 months?

21 THE PROBATION OFFICER: Your Honor, my understanding
22 is 37 months, but it's similar to your understanding about the
23 24 months because it's also my understanding where I think it's
24 not necessarily set that way, but that's what they try to do.

25 THE COURT: Yeah. He might not qualify anyway is my

1 point, so I don't know if you want to insert that
2 consideration, which may affect the designation of which
3 facility.

4 MR. HOSODA: We'd ask that it not be included.

5 THE COURT: Okay. But, I mean, I'm happy to check
6 drug treatment. They have generic drug treatment programs and
7 they might help him, so I'm happy to put that in.

8 MR. HOSODA: That's what Mr. Lyon had indicated to
9 me. If it's helpful, he would be willing to do it, but not if
10 he's -- if he doesn't qualify for it --

11 THE COURT: Yeah, he might not qualify anyway, so,
12 okay, that's how we'll do that then. I won't include that.

13 MR. HOSODA: Thank you.

14 THE COURT: Is there anything else you'd like me to
15 recommend?

16 MR. HOSODA: Well, I'd like to be heard, if
17 possible, with respect to when he reports.

18 THE COURT: Mittimus, right. But on
19 recommendations?

20 MR. HOSODA: No, Your Honor.

21 THE COURT: Okay. Mittimus then. What would you
22 ask for in terms of when he would begin serving his sentence?

23 MR. HOSODA: Your Honor, I'd like to respectfully
24 ask for July 1st. And the reason for that is he continues to
25 work hard to wrap up both personal and financial and business

1 matters. As I had mentioned earlier, he has retained the
2 services of bankruptcy counsel and they are going to follow
3 through with that.

4 As Your Honor knows, there's a meeting of creditors which
5 is required which you would have to be at 30 days following the
6 time that he files. So that would give him a week --

7 THE COURT: This is Mr. Hosoda's -- one of his many
8 specialties, so, you know, we often call him sort of the
9 bridge. You can name any area of law; he works in it: civil,
10 criminal, bankruptcy, what have you.

11 MR. HOSODA: I have to pay my bills, Your Honor.

12 Yeah, respectfully, in order to finalize the company
13 matters as well as his personal matters, I would respectfully
14 request July 1st.

15 THE COURT: So that is a 7-week stay.

16 Did you want to be heard on this?

17 MS. RAUT: No, Your Honor. I defer to your judgment
18 on this.

19 THE COURT: Okay. He's been compliant the whole
20 time, so I think we're okay.

21 Now, you have to continue to follow the conditions of your
22 release. What happens if a report comes to me that you haven't
23 is we just yank the release status and you start serving your
24 prison term right away, which is often very disruptive for what
25 you may have planned.

1 So I will stay mittimus until July 1st. I will require
2 Mr. Lyon to report by 10 A.M. to the facility -- did he want to
3 self-surrender?

4 MR. HOSODA: Yes, Your Honor.

5 THE COURT: And did he want to self-surrender by
6 getting himself to the facility as opposed to having the
7 marshals transport him when -- after he self-surrenders to the
8 marshals?

9 MR. HOSODA: No. He will report.

10 THE COURT: Okay. Then 10 A.M. at the facility that
11 you're assigned to.

12 If that is here in Honolulu, you just go to FDC Honolulu
13 which is right by the airport. You report there by 10 A.M. on
14 July 1st.

15 If you get assigned to Lompoc or some other facility, it's
16 10 A.M. July 1 time at the facility, not Honolulu time. Okay?

17 Okay. Hold on.

18 MR. HOSODA: Your Honor, may I have one more minute
19 to consult?

20 THE COURT: Yes, yes.

21 (Discussion between defendant and defense counsel.)

22 MR. HOSODA: Again, Your Honor, thank you for the
23 opportunity to consult. I have -- after consulting with
24 Mr. Lyon, the preference would be for Lompoc because we believe
25 that the stay already may disqualify him and just have

1 certainty as well as, you know, we've taken a look at the
2 facility as well, so I think that that would be his preference.

3 THE COURT: Okay. So you want me to change it to be
4 first choice is Lompoc.

5 Is there a second choice or no? You don't have to. No?
6 Okay. So just Lompoc. I mean, we could say the second choice
7 is a West Coast facility. Do you want that?

8 MR. HOSODA: Yes, Your Honor.

9 THE COURT: Because of the ease of family visits?
10 Okay. We'll do it that way.

11 Anything else?

12 MR. HOSODA: Nothing further, Your Honor.

13 THE COURT: Then thank you to both sides. This is a
14 pretty complicated case. I thank both sides for helping me.

15 Good luck to you, Mr. Lyon. Thank you very much.

16 MS. RAUT: Thank you, Your Honor.

17 (Proceedings concluded at 3:11 P.M.)

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COURT REPORTER'S CERTIFICATE

I, DEBRA READ, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, May 30, 2019.

/s/ Debra Read
DEBRA READ, RDR